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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

JONATHAN AVERY, *individually*  
*and on behalf of all others similarly*  
*situated,*

Plaintiff,

v.

GLOBAL EXCHANGE VACATION  
CLUB, *et al.*,

Defendants.

Case No. 8:23-cv-02071-JFW-DFM

**Parties' Joint Report of 26(f)  
Conference and Proposed Amended  
Schedule of the Case<sup>1</sup>**

District Judge: John F. Walter

Complaint filed: November 3, 2023  
Transferred: June 3, 2024  
Scheduling Conference: June 15, 2024

<sup>1</sup> The original schedule was entered by Judge Cormac J. Carney before the transfer. (ECF No. 33).

1  
2 Plaintiff Jonathan Avery (“Plaintiff” or “Avery”) and Defendants Global  
3 Exchange Vacation Club, Global Exchange Development Corp., and Resort  
4 Vacations, Inc. (hereinafter “Defendants” and jointly with Plaintiff “the Parties”),  
5 jointly submit this report in accordance with Rules 16(b) and 26(f) of the Federal  
6 Rules of Civil Procedure, Local Rule 26-1, and the Court’s Order dated June 11,  
7 2024 (ECF No. 39).  
8  
9

10 **Summary of Rule 26(f) Conferences and Prior Scheduling Order**

11 While the case was pending before Judge Carney, the Parties held their 26(f)  
12 Conference via Teams videoconference on January 31, 2024 and filed their report  
13 on February 5, 2024. ECF No. 32. The Court issued a scheduling order on March 7,  
14 2024, which listed the case for trial on March 17, 2026 and imposed a class  
15 certification deadline on Plaintiff on June 9, 2025. ECF No. 33. The case was  
16 transferred June 3, 2024, and this Court issued an Order requiring the Parties to  
17 submit a new proposed schedule and 26(f) Report. ECF No. 39.  
18  
19

20 For their renewed 26(f) Conference, counsel for the parties met and conferred  
21 via Teams videoconference on July 3, 2024. Present for the parties were Jake  
22 Ginsburg for the plaintiff and Dan Lawton and Mark Rawdin for the defendants.  
23 The parties discussed the schedule of the case, their respective positions on  
24 settlement and ADR, issues relating to discovery and class certification, and other  
25 matters listed in Rule 26 and Local Rule 26-1.  
26

1           **1. Status of Service on Parties and Subject Matter Jurisdiction.**

2           All Defendants served. This class-action lawsuit was filed under the federal  
3 Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.* This  
4 Court has subject-matter jurisdiction over the TCPA claims in this action under 28  
5 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions  
6 arising under the laws of the United States. See *Mims v. Arrow Fin. Servs., LLC*,  
7 565 U.S. 368, 386-87 (2012) (confirming that 28 U.S.C. § 1331 grants the United  
8 States district courts federal-question subject-matter jurisdiction to hear private  
9 civil suits under the TCPA).  
10  
11

12  
13           **2. Chronology of Facts, Statement of Principal Factual Issues.**

14  
15           **Plaintiff:** Avery’s complaint is based on the Telephone Consumer Protection  
16 Act, 47 U.S.C. § 227, *et seq.* and 47 C.F.R. § 64.1200, *et seq.* Avery asserts all  
17 defendants operated as a joint enterprise and worked in concert and, at all times  
18 relevant, to promote purported timeshare investment opportunities. Avery registered  
19 his cell phone number on the National do-not-call registry in 2020 and that, between  
20 July 2021 and July 2022, defendants placed unconsented-to telemarketing calls to  
21 his cell phone, which he used for residential purposes. Avery issued clear direction  
22 to cease and desist telemarketing communications, that he demanded defendants’  
23 internal do-not-call policies, and that defendants placed additional telemarketing  
24 calls to him and declined to provide him with a copy of their internal do-not-call  
25  
26  
27  
28

1 policies. Accordingly, Avery seeks to certify classes of similarly situated persons,  
2 who received two or more telemarketing calls despite registration on the national  
3 do-not-call registry, and who received calls after issuing a clear do-not-call  
4 instruction.  
5

6 **Defendants:** Plaintiff Jonathan Avery contacted defendants on October 8,  
7 2021, via email, complaining of having been called at (214) 673-9006, and  
8 demanded \$1,500. An internal investigation showed the number could not be found  
9 in defendants' lead database. GEVC contacted Mr. Avery on October 15, 2021, told  
10 him the company had no record of making a call to the number that Mr. Avery had  
11 given, and asked for more information. On the same day, the call was determined  
12 to have come from a vendor, HRI. Afterward, Mr. Avery sent an email to GEVC  
13 saying that the call had been made on July 1, 2021, and that he had inadvertently put  
14 the wrong number in his prior emailed demand (the number called was actually  
15 469.556.3933, not 214.673.9006). He said that the call had come from the number  
16 469.525.5663. A second internal investigation revealed the number in GEVC's SPI  
17 database, and that HRI had booked Mr. Avery into attending a sales presentation put  
18 on by Lifestyle Resorts (not GEVC) on July 3, 2021. Later, Mr. Avery complained  
19 of more calls, from numbers 469.551.5483, 469.531.1379, and 469.525.5663, and  
20 demanded \$3,900.00. Further investigation revealed that these numbers did not  
21 belong to any of the defendants or any of their vendors. Defendants emailed Mr.  
22 Avery, telling him defendants make every effort to comply with State and  
23  
24  
25  
26  
27  
28

1 federal DNC laws, that the numbers couldn't be found in the companies' databases,  
2 and that Mr. Avery's number had now been added to the companies' DNC database.

3  
4 Factual issues in dispute include the number of calls Mr. Avery actually  
5 received from any defendant or any of its vendors, which vendor(s) made those calls,  
6 whether Mr. Avery consented to any of the calls he claims to have received.

7  
8 **3. Summary of Disputed Points of Law.**

9  
10 Whether the July 1, 2021, call was a good faith error made despite having  
11 implemented policies and procedures to comply with the do-not-call rules;  
12 whether the fact the Defendants construed Mr. Avery to have acquiesced to calls  
13 precludes liability and/or makes him unsuitable as a class representative; and  
14 whether vicarious liability can be imputed on Defendants in the event calls were  
15 made by third-party vendor(s).

16 **4. Prior, Pending and Anticipated Motions.**

17  
18 There are no motions pending before the court.

19 Defendants anticipate seeking summary judgment.

20  
21 Plaintiff intends to move for class certification. The prior schedule including  
22 a deadline for class certification of June 9, 2025. (ECF No. 33). The Parties agree  
23 this Court's *de facto* class certification deadline of 120 days after transfer, October  
24 1, 2024, will be impracticable in this instance. Defendants have provided records of  
25 calls made to Mr. Avery but not yet provided records of calls made to class members.  
26

1 While Defendants are working diligently on providing those records, it is a time-  
2 consuming process. Further, many of the relevant records of calls made to putative  
3 class members, are in the possession of third-parties. While Plaintiff has issued eight  
4 (8) subpoenas, it is highly unlikely responses will be served by all (or even most) in  
5 ample time to provide those records to an expert and complete class certification  
6 briefing by the deadline.  
7

8  
9 Plaintiff understands this Court requires that class certification be filed early  
10 in the course of litigation. Rule 23(c)(1)(A) requires class certification be filed “at  
11 an early practicable time.” Being mindful of the Court’s Standing Order and the  
12 dictates of Rule 23, and also considering the degree of records required in this case  
13 and the prior schedule in place, the Parties propose a 90-day extension of the Court’s  
14 *de facto* class certification deadline until **December 30, 2024**. The proposed  
15 deadline is still five months earlier than the deadline in the prior schedule.  
16  
17

18 **5. Joinder or Dismissal of Additional Parties, and Amendment of**  
19 **Pleadings.**  
20

21 Plaintiff may yet seek to amend its pleadings, add additional parties, or add  
22 additional claims, should discovery render such step(s) appropriate. At this juncture,  
23 it is not clear to Plaintiff the degree of involvement of Defendants’ third-party  
24 vendors. Plaintiff is waiting on additional information in this regard from the  
25 Defendants and from those third-parties. If discovery demonstrates the prudence of  
26

1 adding additional defendants, Plaintiff will promptly move to amend.

2  
3 **6. Rule 26(a) Disclosures.**

4 The Parties have exchanged initial disclosures required under Fed. R. Civ. P.  
5 26(a).  
6

7 **7. Anticipated and Outstanding Discovery.**

8  
9 **Plaintiff:** Plaintiff has issued interrogatories and two sets of requests for  
10 production on Defendants. While Defendants have served written responses and a  
11 partial document production, there is still critical information and documents for  
12 which Plaintiff is waiting. Most critically, Plaintiff has not yet received call records  
13 reflecting calls made to putative class members.  
14

15 In recent days, Plaintiff has also issued subpoenas to eight (8) third-party  
16 marketing vendors who may have made calls to putative class members on  
17 Defendants' behalf. Plaintiff has not yet received responsive documents from any  
18 of them. While the subpoenas list a response date of August 1, 2024, from  
19 experience, it is highly unlikely all or even most provide responsive documents by  
20 that date. Generally, such documents can take months to compile and enforcement  
21 actions/motions take time to be adjudicated.  
22  
23

24 After Plaintiff receives supplemental document production from Defendants,  
25 he intends to take 30(b)(6) deposition(s). It is likely, Plaintiff will also depose third-  
26 parties who have knowledge about the call campaigns at issue.  
27  
28

**Defendants:**

Defendants have sought the deposition of Mr. Avery through informal communications and not yet succeeded in scheduling it. They will be seeking that deposition as soon as possible and pursuing written discovery aimed at class certification issues during the third and fourth quarters of 2024.

**8. Related Cases or Other Proceedings.**

*Pinn v. Global Exchange Vacation Club, et al.*, no. 8:22-cv-01943-CJC-KES.

**9. Damages and Relief Sought.**

Plaintiff seeks damages for himself and others similarly situated of \$500 per unlawful call which can be trebled to \$1500 per unlawful call in the event of willfulness. Plaintiff also intends to seek certification of the classes identified in the complaint and injunctive relief to prevent similar unlawful telemarketing calls.

**10. LR Certification as to Interested Parties or Persons.**

Plaintiff filed a certificate of interested parties on November 7, 2023. (ECF No. 10). Defendants filed a certificate of interested parties on January 12, 2024. (ECF No. 31).

//////////



1 **11. Proposed Discovery Plan and Schedule of the Case.**

2  
3 Deadline to file motion for class certification: December 30, 2024<sup>2</sup>

4 Hearing on class certification motion: \_\_\_\_\_, 2025

5 Discovery cutoff: May 30, 2025

6  
7 Summary judgment/dispositive motion cutoff: June 13, 2025

8 Motions *in Limine*: September 19, 2025

9 Memoranda of Contentions of Fact and Law: September 19, 2025

10 Joint Statement of the Case, Jury Instructions, Verdict Forms, and Exhibit

11 List: September 19, 2025

12 Final Pretrial Conference: October \_\_\_\_\_, 2025

13 Trial – November \_\_\_\_\_, 2025

14  
15  
16 **12. Jury Trial Estimations.**

17  
18 Case will be tried before a jury. The parties estimate trial to take two to ten days.

19 The scope of trial and the class(es) certified by the Court will control the time needed  
20 for trial. Plaintiff estimates that a trial on a certified class seeking statutory damages  
21 would not take more than 10 court days. In *Krakauer v. Dish Network, LLC*, No.  
22

23  
24 \_\_\_\_\_  
25 <sup>2</sup> This is a 90-day extension from the Court's *de facto* deadline set forth in the Court's Standing  
26 Order at § (5)(i), but five months earlier than the deadline previously issued in this case. *See* ECF  
27 No. 33. Where this case involves substantial records in the possession of both Defendants and  
28 third-parties, the *de facto* deadline appears impracticable.

1 14-00333 (M.D.N.C.), trial on a certified TCPA class started on January 10, 2017  
 2 and the jury returned a verdict nine (9) days later.

3  
 4 **13. Prospects of Settlement and ADR.**

5  
 6 The parties will engage in good-faith settlement discussions and will participate  
 7 in private mediation once. Avery's counsel believes ADR should await  
 8 determination of the size and scope of the putative classes. Defendants believe ADR  
 9 could and should commence sooner than that. All counsel agree ADR Procedure  
 10 No. 3, listed in Local Rule 16-15.4, is best suited to the circumstances of the case.  
 11

12  
 13 **14. Complex Cases and the Manual for Complex Litigation.**

14  
 15 While this is a class-action, the procedures from the Manual need not be utilized.  
 16

17 **15. Proposed Motions and Dispositive Motion Cut-Off Date.**

18  
 19 Plaintiff intends to file a motion for class certification, which has been discussed  
 20 above.

21  
 22 The Parties propose a dispositive motion deadline of June 13, 2025.

23  
 24 **16. Unusual Legal Issues.**

25  
 26 No such issues can be identified at this time. Should such issues become  
 27 apparent, the parties will bring it to the Court's attention.

1       **17.   Proposals regarding severance, bifurcation or other ordering of**  
2       **proof.**

3           None.

4  
5       Dated: July 5, 2024

6  
7                       */s/ Jacob U. Ginsburg*  
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